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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

APR 25 2003

File: WAC-02-010-51966 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, a distributor of pharmaceuticals, seeks authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the Executive Order 12,959, imposing economic sanctions on Iran, was applicable to the petitioner's business activities in this case and denied the petition. The director further concluded that the petitioner had not established that a qualifying relationship existed between the United States and foreign entities.

On appeal, counsel for the petitioner argues that the director incorrectly concluded that the petitioner's activities in the United States were in violation of Executive Order 12,959. Counsel states that pursuant to 31 C.F.R. parts 560, 550, and 538, which went into effect on August 2, 1999, Executive Order 12,959, was amended to allow the trade of pharmaceuticals between U.S. entities and Iranian entities.

Counsel states in pertinent part, that:

> On March 17, 2000, Secretary of State, [redacted] announced that economic sanctions against Iran would be eased to allow import of Food products such as dried fruits...and export of Medicine to Iran.
>
> The beneficiary, [named individual], is a high level executive, and the Vice President of Halavatian Trading. Her duties are primarily focused on conducting negotiations for purchase of various pharmaceutical items for [named pharmaceutical company].
>
> Under 31 C.F.R. 560, the previous executive order 12959 was amended, and therefore, [the beneficiary], an Iranian National is no longer required to go through a third country in order to export pharmaceutical items to Iran. This would also mean that for the Sole Purpose of exporting pharmaceutical, the Iranian National would not be required to have a principle place of business in a third country, before she qualified to obtain a visa under 8 C.F.R. § 214.2(l)(1)(i).

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Regulations at 8 C.F.R. § 214.2(l)(3) state that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services performed.

The United States petitioner states that it was established in 2001 and is a subsidiary of Mohammad Ali Halavatian Trading Company, , which is a branch of Dookh Banoo Company, Ltd., located in Iran. The petitioner seeks to employ the beneficiary temporarily for a period of three years at an annual salary of $50,000.00.

In a letter dated October 10, 2001, counsel states, in pertinent part, that:

> [The beneficiary] has been employed by Dookh Banoo since May 18, 1993 as a Managing Director, a high level executive position on the Board of Directors. She has been the Vice President in Halavatian Trading since that branches formation. Her duties are primarily focused on conducting negotiations between Halavatian Trading and various other multinational pharmaceutical corporations pursuant to a grant of an exclusive license from the Iranian Government to import pharmaceuticals. Currently, [the beneficiary] is negotiating a multimillion dollar contract with [named pharmaceutical company] for the purchase of various pharmaceuticals.
>
> Please note that these negotiations with [named company] and other U.S. based pharmaceutical corporations is being made pursuant to 31 C.F.R. Parts 538, 550, and 560 which went into effect on August 2, 1999. This order amends previous Executive Order #12959 which prevented the trade of goods or services with Iranian entities (also known as the "Iranian Sanctions"). Specifically, the new Executive Order allows trade of pharmaceuticals between US entities and Iranian entities in an effort to promote the relations between the two countries as well as reward for the "democratization" of Iran. Thus, this application for L-1 visa status for [the beneficiary] is not subject to the Iranian Sanctions and is therefore distinguishable from previous applications.

Counsel is correct. The current Executive Order, as amended, does not prohibit the purchase of pharmaceuticals in the United States and their shipment to Iran, which is the basis of the petitioner's business. The petitioner has overcome this portion of the director's objections. However, the petition may not be approved, as the record contains insufficient evidence to demonstrate that there is a qualifying relationship between the U.S. and foreign entities.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

> *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
>
> (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(I) state:

> *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(J) state:

> *Branch* means an operating division or office of the same organization housed in a different location.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(K) state:

> *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns directly or indirectly, less than half of the entity, but in fact controls the entity.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L) state, in pertinent part:

> *Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
>
> (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner claims that it is a wholly-owned subsidiary of Mohammad Ali Halavatian Trading Company, a branch of Dookh Banoo Company, Ltd. However, the record does not contain sufficient evidence in the form of stock certificates, stock ledgers, minutes of any applicable board of director's meetings, tax records or other definitive evidence to show ownership and control of the United States entity. Therefore, it cannot be concluded from the evidence of record that a qualifying subsidiary relationship exists between the United States and foreign entities. For this reason the petition may not be approved.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.